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BOSTON REDEVELOPMENT AUTHORITY
HOUSING CREATION REGULATIONS
PROMULGATED PURSUANT TO ARTICLES 26 & 26A
OF THE BOSTON ZONING CODE
APRIL 17, 1986

Section 1: Scope and Purpose

Articles 26 and 26A of the Boston Zoning Code require Developers of certain projects, known as Development Impact Projects, to contribute Development Impact Project Exactions to help alleviate the shortage of affordable housing in the City of Boston. Developers may elect from two options in order to satisfy their obligations under Articles 26 or 26A: 1) Housing Exaction Payments may be made in equal annual installments (the "Housing Payment Option"), or 2) Developers may create or contribute to the creation of housing affordable to low and moderate income households pursuant to these regulations (the "Housing Creation Option").

Articles 26 and 26A require the Boston Redevelopment Authority to promulgate regulations governing the administration of the Housing Creation Option. These regulations set forth procedures and requirements for Developers who have elected the Housing Creation Option and are intended to encourage Developers to select the Housing Creation Option.

Section 2: Definitions

The following terms, wherever used in these regulations, shall have the following meanings, unless the context clearly requires otherwise:

- (a) "Affordable Housing" shall mean housing, the costs for which shall not exceed a certain percentage of the income of Low or Moderate Income Households, such costs and such percentage to be that set from time to time by the Massachusetts Housing Finance Agency or its successor agency for similar programs administered by it and shall include specifically and without limitation rooming houses, congregate housing, transitional housing, halfway housing, emergency shelters, cooperatives, condominiums, and single or multi-family dwellings, as determined appropriate, desirable, and feasible by the Neighborhood Housing Trust.

- (b) "Authority" shall mean the Boston Redevelopment Authority, a public body politic and corporate duly organized and existing under Massachusetts General Laws Chapter 121B.
- (c) "CDC" (Community Development Corporation), shall mean a corporation duly organized and existing pursuant to Massachusetts General Laws, Chapter 40F.
- (d) "Certificate of Compliance" shall mean a certificate approved by the Authority which certifies that a Developer has complied with the requirements of a Housing Creation Agreement to which the Developer is a party.
- (e) "Developer" shall mean an individual, corporation, business trust, estate trust, partnership or association, two or more Developers having a joint or common interest, or any other legal or commercial entity subject to Articles 26 or 26A of the Boston Zoning Code.
- (f) "Director" shall mean the Director of the Boston Redevelopment Authority.
- (g) "Housing Creation Option" shall mean the means as set forth in these regulations by which a Developer shall satisfy its obligations under Articles 26 or 26A of the Boston Zoning Code if electing the Housing Creation Exaction Option thereunder.
- (h) "Housing Payment Option" shall mean the means by which a Developer shall pay the amount calculated pursuant to Articles 26 or 26A of the Boston Zoning Code which the Developer is required to pay if electing the Housing Payment Exaction option thereunder.
- (i) "Low Income Household" shall mean a household where the total income of the members thereof at initial occupancy does not exceed fifty percent of the median income for the Boston Standard Metropolitan Statistical Area as set forth in or calculated based upon regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974.

- (j) "MBE" (Minority Business Enterprise) shall mean a business organization which has been certified as a Minority Business Enterprise by the Mayor's Office of Jobs and Community Service.
- (k) "Moderate Income Household" shall mean a household where the total income of the members thereof at initial occupancy does not exceed eighty percent (80%) of the median income for the Boston Standard Metropolitan Statistical Area as set forth in or calculated based upon regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974.
- (l) "Neighborhood Housing Trust" shall mean the Massachusetts charitable trust to be created pursuant to the Special Statutes and Ordinances of the City of Boston. The Trust will administer funds received by means of the Housing Payment Exaction requirement for Development Impact Projects.
- (m) "Net Present Value" shall mean the value of an amount of money equal to the sum of discounted payments which would have been made by the Developer had it elected to satisfy its obligations under Articles 26 or 26A of the Boston Zoning Code through the Housing Payment Option, such discounting to be measured from the date at which the Developer enters into a Housing Creation Agreement with the Authority to the dates at which each Housing Payment installment payment would have been made.
- (n) "Seed Money" shall mean money placed in a revolving fund to be administered by the Neighborhood Housing Trust for low-interest loans to MBE's, CDC's, or other for-profit or non-profit organizations for the purpose of encouraging the housing creation activities contemplated by these regulations.

Section 3: Housing Creation Options

A Developer who elects to satisfy its obligation under Articles 26 or 26A of the Boston Zoning Code through the Housing Creation Option may propose, in accordance with the requirements of these Regulations, that it fulfill all or any part of its obligation by methods such as but not limited to the following:

- (a) Directly creating, through new construction, acquisition/rehabilitation or purchase, Affordable Housing:

Example: A Developer having a linkage obligation of \$500,000 (Net Present Value), acquires and constructs 15 townhouse family housing units at a total cost of \$1,200,000. The units are then sold subject to resale restrictions to low and moderate income home buyers at prices totaling \$700,000. The Developer has underwritten the housing so produced to the extent of the linkage obligation.

or

- (b) Forming a joint venture, general or limited partnership or similar corporate relationship with an MBE, CDC, or for-profit or non-profit organization for the creation of Affordable Housing. The Developer shall ensure that any joint venturer, co-developer or partner of the Developer's shall become a party to the Housing Creation Agreement required pursuant to Section 9 hereof and be bound thereby;

Example: The Developer invests its \$500,000 linkage obligation (Net Present Value) as a partner in an entity formed to build and operate a rental housing development of which a qualifying MBE, CDC or for-profit or non-profit organization is the controlling general partner. This equity permits the general partner to obtain project financing. Assigned to the Neighborhood Housing Trust are all cash dividends and all proceeds due from sale, resyndication or refinancing of the project up to the amount of the Net Present Value of the Developer's linkage obligation, plus interest.

or

- (c) Contributing the Net Present Value of the payments which would have been made under the Housing Payment Option to an entity designated by the Developer and approved by the Authority, which entity shall be responsible for the construction

and operation of Affordable Housing. The Developer shall ensure that any entity so designated and approved shall become a party to the Housing Creation Agreement required pursuant to Section 9 hereof and be bound thereby.

Example: The Developer loans \$500,000 on favorable terms to an MBE, CDC or for-profit or non-profit housing producer as primary or subordinated permanent project financing, for the housing producer to use for the purchase of a subsidy annuity, or for such other purpose as may be necessary to the production of Affordable Housing. As the interest rate is well below market rates, affordable rental or equity housing is produced. The Developer assigns its interest in the Loan to the Neighborhood Housing Trust, thus discharging its linkage obligation.

or

- (d) Selecting any of the options above or any combination of the options above in full or partial satisfaction of its obligations under Articles 26 or 26A.

Example: The Developer, wishing to satisfy half of its linkage obligation currently and electing to pay the remainder over 12 years, invests \$250,000 as a limited partner in a new housing development sponsored by an MBE, CDC or for-profit or non-profit organization. The remaining linkage obligation is satisfied pro rata according to the requirements of the Housing Payment Option.

Section 4: Housing Creation Proposal Review Criteria

All proposals shall be evaluated according to criteria which shall include but not be limited to the following:

- (a) provide equity (ownership) opportunities for Low and Moderate Income Households;
- (b) maximize the number of units of housing available to Low and Moderate Income Households;

- (c) maximize the term of occupancy for Low and Moderate Income Households; and
- (d) cause the improvement of blighted areas in the City.

Section 5: Satisfaction of Linkage Obligation; Equivalent Value

The Developer's obligations under Articles 26 or 26A shall be satisfied under Section 3 if and only if the amount of the Developer's contribution under any of the options set forth in Section 3 is equal to the Net Present Value of the payments that would have been made by the Developer had it elected the Housing Payment Option. Net Present Value shall be determined by applying a composite discount rate to the payments that the Developer would have made under the Housing Payment Option. The discount rate shall be calculated by adding fifty percent of the Developer's verified cost of funds for the construction of its Development Impact Project to fifty percent of the current most recent City of Boston long-term (ten year) municipal bond yield.

Section 6: Housing Creation Proposal

A Developer electing the Housing Creation Option shall submit a proposal setting forth the Developer's plan for creating Affordable Housing which would not have been built but for the Developer's contribution. The proposal shall comply with the submission requirements set forth in the Development Review Procedures as published by the Authority from time to time and shall contain such other information as the Director and the Neighborhood Housing Trust may require.

Section 7: Review by Neighborhood Housing Trust

The Director shall submit the proposal to the Neighborhood Housing Trust immediately upon receipt thereof. The Neighborhood Housing Trust shall review the overall appropriateness of the proposal and shall recommend to the Authority approval, with or without conditions, or denial of each proposal within forty-five (45) calendar days of receipt thereof.

Section 8: Proposal Approval

Upon completion of review of the proposal by the Neighborhood Housing Trust and the Authority or upon the expiration of the above-mentioned forty-five day review period, the Authority after public notice and hearing shall take final

action on the Developer's housing creation proposal and shall promptly notify the Developer of its action in writing.

Section 9: Housing Creation Agreement

Upon approval of the proposal by the Authority, the Director and the Developer shall enter into an agreement ("Housing Creation Agreement") which shall be in a format prescribed by the Authority and contain such provisions as the Director and the Neighborhood Housing Trust determine necessary to ensure the completion of the project in accordance with the Developer's proposal as approved by the Authority.

Section 10: Certificate of Compliance

Upon satisfactory performance of its obligations under the terms of the Housing Creation Agreement and if so requested by the Developer, the Authority shall issue to the Developer a Certificate of Compliance.

Section 11: Seed Money Loans

If a Developer selects the option set forth in Section 3(c), up to five percent (5%) of the Developer's contribution shall be set aside and placed in a seed money revolving fund to be administered by the Neighborhood Housing Trust. Such funds may be loaned to MBE's, CDC's or other for-profit or non-profit organizations for the purpose of encouraging the housing creation activities contemplated by these regulations. The interest rates on such loans shall be equal to fifty percent (50%) of the City of Boston current long-term (ten year) municipal bond yield.

Section 12: Section Headings

The captions to the sections used throughout these Regulations are intended solely to facilitate the reading of and reference to the sections and provisions of these Regulations. The captions shall not affect the meaning or interpretation of these Regulations.

Section 13: Severability

If any provision or section of these Regulations shall be held to be invalid by a court of competent jurisdiction, such provision or section shall be deemed to be separate and apart from the remaining provisions or sections of these Regulations and such remaining provisions or sections shall continue in full force and effect.

Approved and voted this _____ day of _____, 1986.

Robert L. Farrell, Chairman

Joseph J. Walsh, Vice-Chairman

James K. Flaherty, Treasurer

Clarence J. Jones, Vice-Treasurer

Michael F. Donlan, Member

Kane Simonian, Secretary

